



BOULT • CUMMINGS
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OFFICE OF THE
EXECUTIVE SECRETARY
November 25, 2001

Richard Collier, Esq.
Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: *Request for Interconnection with TDS*
Docket -00-00026

Dear Richard:

Pursuant to 47 U.S.C. § 251(f)(A), US LEC of Tennessee requests an interconnection agreement with Telephone & Data Systems, Inc. (TDS). A proposed draft agreement is attached.

For the purpose of this proceeding, US LEC's request applies to the following markets.

1. Concord Telephone Exchange-Concord
2. Tellico Telephone-Vonore Exchange
3. Tennessee Telephone Company- Halls Crossroads, LaVergne and Mt. Juliet Exchanges

This request for interconnection supercedes the request previously filed by US LEC in this docket.

Sincerely,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:


Henry Walker

Cc:Dale Grimes

TRAFFIC EXCHANGE AGREEMENT

This Traffic Exchange Agreement ("Agreement") is effective as of [Date] (the "Effective Date") between US LEC of "State" Inc. ("US LEC"), a corporation organized under the laws of the State of (Delaware or North Carolina), with offices at 6801 Morrison Blvd., Charlotte, NC 28211, and "Company Full Name" ("Company"), a corporation organized under the laws of the State of "?" with offices at ("Company address").

RECITALS

WHEREAS, US LEC and "Company" are telecommunications companies that are in the business of providing local exchange services to their respective subscribers in the State of "State"; and

WHEREAS, "Party" shall mean US LEC or "Company" and "Parties" shall mean US LEC and "Company".

WHEREAS, US LEC and "Company" wish to enter into an agreement pursuant to which they may terminate calls originating on the other party's network, either directly or through a transiting arrangement with the incumbent local exchange carrier ("ILEC"); and

WHEREAS, US LEC and "Company" desire to enter into this Agreement to, among other things, set forth the terms and conditions under which they will exchange subscriber traffic on their respective networks.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, US LEC and "Company" agree as follows:

1. TERM

1.1 The initial term of this Agreement shall commence on the Effective Date and shall continue thereafter for a period of two (2) years (the "Initial Term").

1.2 Following expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year terms unless either Party requests re-negotiation or gives notice of termination at least sixty (60) days prior to the expiration of the then-current term. In the event that any requested renegotiation does not conclude prior to expiration of the then-current term, this Agreement shall continue in full force and effect until replaced by a subsequent agreement, and the terms of such subsequent agreement shall be effective retroactive to the day following expiration of this Agreement. In the event that any requested renegotiation does not conclude within one hundred eighty (180) days of the date of the request for renegotiation, either Party may file a Petition with the state Commission to resolve the remaining issues in the renegotiation. Notwithstanding the termination of this Agreement by either Party, US LEC and "Company" each agree that they will continue to terminate subscribers' traffic originating on the network of the other Party.

2. EXCHANGE OF TRAFFIC

- 2.1 "Local Traffic" shall mean traffic between stations in the same or different exchanges for which there is not a separate charge to the subscriber for the completion of calls. Local Traffic does not include traffic involving optional local calling scopes (i.e., ELCA calling or optional rate packages that permit the end user to choose a local calling scope beyond their basic exchange serving area for an additional fee).
- 2.2 "Toll Traffic" shall mean telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.
- 2.3 US LEC and "Company" each agree, in accordance with the terms of this Agreement, to terminate local and IntraLATA toll traffic originating on the other Party's network that is destined for the terminating Party's subscribers, including, without limitation, calls to Internet and other enhanced service providers. Except as set forth in Section 4 below, the Parties shall exchange traffic through an Incumbent Local Exchange Carrier (ILEC), as defined in 47 U.S.C. Section 251 (h) (1), tandem or alternate tandem. Each Party shall be responsible for ensuring that it has adequate facilities in place to connect its network with each ILEC tandem or alternate tandem that is used by the Parties to transit traffic and shall bear its own costs associated therewith. The Party on whose network the call originates shall be responsible for payment of any transit charges (including, without limitation, tandem switching and transport charges) assessed by the ILEC or other third party for use of the applicable tandem.
- 2.4 For traffic conveyed by either Party to the other pursuant to this Agreement, the terminating Party shall, in terms of routing facilities and quality of network performance, treat and convey such traffic within its network in a manner that is at least equivalent to the manner in which it treats like calls originating on its own network and the network of any other carrier.

3. COMPENSATION; USAGE REPORTS

- 3.1 Compensation for Termination of Local Traffic. "Local Traffic" means any traffic that the originating carrier rates as a local call for its end users, including calls that are transited over the network of a third party LEC. The Parties agree that each is entitled to compensation for terminating local traffic that originates on the other Party's network.
- 3.1.1 Based on the assumption that the local traffic exchanged by the Parties will be *de minimus* and in balance, the Parties shall initially terminate each other's local traffic on a Bill and Keep basis. For purposes of this agreement, *de minimus* shall mean no more than one million (1,000,000) minutes terminating on a Party's network per month, for three consecutive months. "Bill and Keep" shall mean that the Party originating the traffic has no obligation to pay terminating charges to the other Party for terminating the traffic, regardless of any charges the originating Party may assess its subscribers. Using the usage reports prepared in accordance with Section 3.4.1 below, US LEC and "Company" shall track the local traffic terminated for the other Party during the preceding calendar quarter. Once the usage reports show that the *de minimus*

threshold has been exceeded and that the local traffic is no longer in balance in accordance with Section 3.1.2 below, the parties agree to compensate one another for the termination of such traffic. Thirty days written notice is required prior to billing.

- 1.1.2 If the usage reports show that one Party has and is terminating sixty percent (60%) or more of the total local traffic exchanged between the Parties in one (1) quarter and the *de minimus* threshold established in 3.1.1 is exceeded, the Parties agree to negotiate in good faith to reach an equitable compensation arrangement; provided, however, that during the negotiation period or if the Parties are unable to agree on a revised compensation arrangement within ninety (90) days after renegotiations commence, the Parties shall use the per-minute reciprocal compensation rates charged to US LEC by the dominant ILEC in the state, which rates shall apply retroactively to the date the first day of the quarter following the quarter in which the relevant traffic imbalance occurred. The Parties shall enter into such documentation, as may be necessary or desirable, including, without limitation, an amendment to this Agreement, to effect the revised compensation arrangement.

3.2 Compensation for Termination of IntraLATA Toll Traffic.

- 1.1.1 The Parties agree to pay one another their respective and appropriate intrastate or interstate published and effective access rates for the termination of traffic other than local.

3.3 Compensation for 8YY Traffic

- 3.3.1 Each Party shall compensate the other pursuant to the appropriate switched access charges, including the database query charge as set forth in their respective interstate or intrastate published and effective access tariffs.
- 3.3.2 Each Party will provide to the other the appropriate records necessary for billing 8YY customers. The records will be in standard EMI format for a fee of \$0.013 per record.

3.4 Usage Reporting Requirements.

- 3.4.1 On a quarterly basis, each Party shall provide to the other a usage report/PLU setting forth the total local traffic minutes of use sent to the other Party for termination during the previous quarter. This usage report shall be provided in addition to, and not in lieu of, the CPN and ANI information required to be provided in Section 6.
- 3.4.2 Either Party may audit the other Party's usage data/PLU on no fewer than thirty (30) days advance written notice. Any such audit shall take place during normal business hours at the office of the Party being audited, shall be subject to the confidentiality provisions of Section 13, and shall be performed by an auditor selected and paid for by the Party requesting the audit. Notwithstanding the foregoing, an audit may be requested by a Party no more than twice in any twelve (12) month period and the Party being audited shall not be required to

produce usage records for more than the six (6) consecutive months preceding the audit. The Parties shall work together cooperatively to resolve any problems uncovered as the result of an audit performed in accordance with this Section 3.4.2. If it is determined that the auditing Party has overpaid the audited Party, the audited Party shall refund the overpaid amount, plus interest at the rate in Section 8.7 below, to the auditing Party within thirty (30) days of such determination. If it is determined that the auditing Party has underpaid the audited Party, the auditing Party shall reimburse the audited Party the difference between the amount paid and the amount which should have been paid, plus interest at the rate in Section 8.7 below, within thirty (30) days of such determination. If the Parties are unable to agree on the results of the audit, then either or both Parties may pursue their claims and remedies at law or equity.

3.4.3 The difference between a Party's PLU factor and 100% represents the percentage of minutes that shall be billed at the other Party's intraLATA tariffed access rates. The Parties agree that US LEC's initial PLU is ___% and "Company"'s initial PLU is ___%. The PLU factors will be updated quarterly, unless the Parties agree otherwise. Each Party updating the PLU shall provide the new PLU and supporting documentation to the other Party at least 30 days prior to the beginning of the effective quarter. PLU changes are prospective in their application and will not be used to bill retroactively.

1.1.4 In the event "Company" cannot provide a PLU then US LEC shall provide "Company"'s and US LEC's PLU factors for use in determining the portion of non-local minutes to be billed as intraLATA toll by the Parties.

3.4.5 Notwithstanding the foregoing, where the terminating company has message recording technology that identifies the traffic terminated, such information, in lieu of the PLU factor, shall at the Parties option be utilized to determine the appropriate local usage compensation to be paid.

4. TRUNK FORECASTING, ORDERING AND PROVISIONING FOR EXCHANGE OF TRAFFIC THROUGH DIRECT INTERCONNECTION

4.1 Direct Interconnection. In the event that the volume of traffic exchanged by the Parties grows to a point where it is economically advantageous to establish a direct connection between US LEC and "Company" rather than transit traffic through a third party's tandem, the Parties may mutually agree upon a method of achieving the direct connection, including designation of the Point of Interconnection. "Point of Interconnection" shall mean the physical point that establishes the technical interface, the test point, and the operational and financial responsibility hand-off point between US LEC and "Company" for the local interconnection of their networks. If and when the Parties choose to interconnect directly, US LEC and "Company" shall meet and mutually agree upon at least one Point of Interconnection, which shall be located within the geographic area in which the Parties exchange traffic. US LEC shall be responsible for engineering and maintaining its network on its side of the Point(s) of Interconnection. "Company" shall be responsible for engineering and maintaining its network on its side of the Point(s) of Interconnection regardless of the method of direct connection agreed to, trunk groups shall be two-way and the procedures set

forth in Section 4.4 below shall be used by the Parties for the ordering of trunk groups. The number of trunk groups used to connect the Parties' networks shall be determined, in part, by the exchange of trunk forecasts between the Parties as set forth in Section 4.2 below. Trunks shall be provided, at a minimum, over a DS1 line with B8ZS and 64 Clear Channel Capability (CCC).

- 4.2 Trunk Forecasts for Direct Interconnection. Once direct trunking arrangements are established, each Party shall provide the other Party with trunk quantity forecasts in a mutually agreed upon format once every six (6) months, commencing on the date the Parties decide to establish a direct connection. The forecasts shall include all information necessary to allow the other Party to manage its trunking facilities. Any direct trunks installed pursuant to this Agreement shall be two-way and shall carry local, EAS and intraLATA toll traffic only.
- 4.2.1 The Parties shall exchange forecasted trunk quantity requirements for a period that is no less than one (1) year from the date of the forecast and no more than two (2) years from the date of the forecast. The forecast shall be itemized by switch location. Each switch location shall be identified by the use of Common Language Location Identifier (CLLI) Codes, which are described in Telcordia documents BR 795-100-100 and BR 795-400-100.
- 4.2.2 The parties shall provide a description of any pre-planned events (e.g., cross network call-ins) that may cause significant increases in call volumes during the forecasted period with sufficient advance notice to enable both Parties to ensure completion of all calls.
- 4.3 Review and Update of Trunk Forecasts for Direct Interconnection. At the time the direct connection is established, each Party shall provide the other with a point of contact for the reconciliation of trunk forecasts. In the event that there is a discrepancy between the Parties' forecasts, the Parties shall negotiate in good faith to reconcile the forecasts. If either Party becomes aware of any factors that would materially modify the forecast it has previously provided pursuant to Section 4.2 above, it shall promptly provide written notice of such modifications to the other Party.
- 4.4 Trunk Ordering for Direct Interconnection.
- 4.4.1 To establish the initial two-way trunk groups to directly connect the Parties, US LEC will order two-way trunks by submitting an access service request (an "ASR") (or any other industry standard request eventually adopted to replace the ASR for local service ordering that has been mutually accepted by both Parties as a method for ordering trunks).
- 4.4.1.1 Each Party shall monitor the Trunk Utilization of the trunk groups for an initial trial period of three (3) months. "Trunk Utilization" shall mean a measurement, commonly in Erlangs or Centi Call Seconds (CCS), of the intensity of the traffic carried by a group of circuits or a trunk group (1 Erlang = 36 CCS = 100% utilization of a circuit). At the end of the initial three (3) month period, each Party shall review the Trunk Utilization for the third month of the initial three (3) month trial period. If the average Trunk Utilization of the trunk groups during such third month is at or above sixty

percent (60%) of the total trunk capacity (measured on a bouncing busy hour basis) US LEC will issue an ASR in accordance with Section 4.4.1 to resize the trunk group. After the initial three (3) month period, US LEC shall augment the trunk groups when Trunk Utilization during the third month of any three (3) month period is at or above seventy-five percent (75%) of the total trunk capacity (measured on a bouncing busy hour basis), US LEC will order additional trunks in accordance with Section 4.4.1 to resize the trunk group.

- 4.4.2 Either Party may initiate an order to resize the trunk groups used to directly connect the Parties at any time after the initial establishment of trunk groups and ordering of trunks. Any order to resize the trunk groups shall follow the procedures set forth in Section 4.4.1.1. "Company" may request an augment through issuance of a Trunk Group Service Request to US LEC, to which US LEC shall respond by issuing an ASR within five (5) business days.

4.5 Provisioning Responsibilities for Direct Interconnection, Trouble Reporting and Management.

- 4.5.1 Each Party shall provide to the other Party the contact number(s) to its control office which shall be accessible and available for the purpose of, without limitation, (a) coordinating trunk orders (e.g., notifying the other Party of delays in trunk provisioning), (b) maintaining service (e.g., notifying the other Party of any trouble or need for repairs), and (c) notifying the other Party of any equipment failures which may affect the interconnection trunks. Any changes to a Party's control office contact arrangement must immediately be provided to the other Party in writing pursuant to the procedures in Paragraph 17, below.
- 4.5.2 Each Party shall coordinate and schedule testing activities of its own personnel, and others as applicable, to ensure that trunks are installed in accordance with the ASR, meet agreed-upon acceptance test requirements, and are placed in service by the in-service date.
- 4.5.3 Prior to reporting any trouble with interconnection facilities to the other Party, each Party shall perform sectionalization to determine if trouble is located in its facility or in its portion of the trunks.
- 4.5.4 The Parties shall cooperatively plan and implement coordinated repair procedures for the interconnection facilities in order to ensure that trouble reports are resolved in a timely manner and that the trouble is promptly eliminated.
- 4.5.5 Prior to the placement of any orders for two-way direct connection trunks, the Parties shall meet and mutually agree upon technical and engineering parameters.
- 4.5.6 To the extent possible, US LEC and "Company" will maintain the existing trunk groups used to transit traffic through the ILEC's tandem or alternative tandems. Overflow traffic carried on the direct trunks will be routed to ILEC tandems.

5. NETWORK TRAFFIC MANAGEMENT FOR EXCHANGE OF TRAFFIC THROUGH

DIRECT INTERCONNECTION

- 5.1 **Blocking Standard.** Each Party shall maintain a blocking standard of no more than one-half percent (0.5%) during the bouncing busy hour, i.e., the peak busy time each day, based upon mutually agreed engineering criteria. If blocking should occur as defined in this section for a period of three (3) consecutive days, either Party may issue an ASR to establish interconnection trunks to relieve the blocking, and such trunks shall be established within five (5) days of the issuance of the ASR.
- 5.2 **Protective Protocols.** In order to protect their respective networks from facility failures, switch congestion or focused overload (e.g., excessive traffic to a specific subscriber due to radio show call-ins), either Party may use protective network traffic management protocols. These protocols may include, without limitation, 10-digit code gaps on traffic, whereby the originating Party limits traffic directed to a designated 10-digit subscriber at the originating end office. Each Party must provide notice (using a format and method mutually agreed upon by the Parties) to the other Party's control office (see Section 4.5.1) in advance of any planned event requiring the need for a protective protocol. If the event requiring a protective protocol is not a planned event (e.g., a facility failure) the Parties shall notify each other of the need for a protective protocol as soon as practicable.
- 5.3 **Expansive Protocols.** In order to temporarily relieve network congestion due to facility failures or unanticipated abnormal calling patterns, the Parties may use expansive protocols. These protocols may include, without limitation, originating or terminating traffic reroutes (e.g., high volume call-in networks), and NXX or NPA blocking, whereby the originating Party blocks traffic directed to an affected trunk group at the originating end office. Expansive protocols shall be used only as a temporary remedy to alleviate abnormal network volume and not as a method to circumvent normal trunk servicing. Expansive protocols that require extensive coordination between the Parties or substantial network resources, such as originating or terminating traffic reroutes, shall be used only when mutually agreed upon by the Parties. The Parties agree to negotiate in good faith to determine and implement the appropriate expansive protocol for each such case as soon as practicable.

6. SIGNALING.

- 6.1 **Common Channel Interoffice Signaling (CCIS)** shall be used, where technically feasible and available, by the Parties via SS7 to set up calls between the Parties' Telephone Exchange Service networks. Each Party shall supply, at a minimum, Automatic Number Identification ("ANI") and Calling Party Number ("CPN") within the SS7 signaling message as described in Section 6.3.
- 6.2 Each Party is responsible for ensuring that SS7 messages can be exchanged with the other Party's CCIS network. Each Party shall connect to a pair of access STPs that serve each LATA where traffic will be exchanged or shall arrange for signaling connectivity through a third party provider which is connected to the other Party's signaling network. The Parties shall establish interconnection at the STP.
- 6.3 The Parties will cooperate on the exchange of all appropriate SS7 messages for local, EAS and intraLATA call set-up signaling, including ISDN User Part (ISUP) and

Transactional Capabilities Application Part (TCAP) messages to facilitate full interoperability of CCIS-based features between their respective networks, including all CLASS features and functions, to the extent each Party offers such features and functions to its Customers. All SS7 and CCIS signaling parameters will be provided, including CPN and ANI, Originating Line Information (OLI), calling party category and charge number. For terminating Exchange Access traffic, such information shall be passed by a Party to the extent that such information is provided to such Party. Also included are all parameters relating to network signaling information, such as Carrier Information Parameter (CIP), wherever such information is needed for call routing or billing.

7. MEASUREMENT AND BILLING

7.1 For billing purposes, each Party shall pass CPN and ANI associated with that Party's originating subscriber line on each call that originates on its network and terminates on the other Party's network. All calls that originate on a Party's network that are exchanged without CPN and ANI information shall be billed in accordance with the PLU factors specified in Section 3.3 above.

7.2 The billing exchanged between the Parties shall adhere to the Carrier Access Billing System (CABS) guidelines as defined in documents prepared under the direction of the Billing Committee of the OBF, as such documents may be amended from time to time. The CABS documents are currently published by Telcordia in Volumes 1, 1A, 2, 3, 3A, 4 and 5 as Special Reports SR-OPT-00168, SR-OPT-001869, SR-OPT-001871, SR-OPT-001872, SR-OPT-001873, SR-OPT-001874 and SR-OPT-001875, respectively, and contain the recommended guidelines for the billing of access and other connectivity services.

8. PAYMENT; DISPUTES

8.1 Except as may be otherwise provided in this Agreement, each Party shall submit on a monthly basis a statement of charges incurred by the other Party during the preceding month for services rendered hereunder. Payment of billed amounts under this Agreement, whether billed on a monthly basis or as otherwise provided herein, shall be due, in immediately available U.S. funds within thirty (30) days of the date such statement is received.

8.2 Either Party may request the other Party to verify the accuracy of amounts shown on invoices provided pursuant to this Agreement. The Party receiving the request shall provide information reasonably sufficient to verify its invoices within thirty (30) days after the request date.

8.3 Although it is the intent of both Parties to submit timely and accurate statements of charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and the billed Party shall not be entitled to dispute the billing Party's statement(s) based on such Party's failure to submit them in a timely manner.

8.4 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying

Party") shall within thirty (60) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amount it disputes and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay all undisputed amounts to the Billing Party when due.

- 8.5 If the Parties are unable to resolve the issues related to the disputed amount in the normal course of business within thirty (30) days after delivery to the Billing Party of notice of the disputed amount, each of the Parties shall appoint a designated representative that has authority to settle the dispute and that is at a higher level of management than the persons with direct responsibility for billing issues. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives; however, all reasonable requests for relevant information made by one Party to the other Party shall be honored.
- 8.6 If the Parties are unable to resolve issues related to the disputed amount within fifteen (15) days after the Parties' appointment of designated representatives pursuant to Section 8.5, then either Party may pursue its right to resolution of the dispute as set forth in Section 20.11.
- 8.7 Any undisputed amount not paid when due, or disputed amount that is later deemed to have been billed correctly by the billing company, shall accrue Late Payment Charges from the date such amounts were due at the lesser of (i) one and one-half (1-1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law.

9. GENERAL BUSINESS REQUIREMENTS

- 9.1 Contact with Subscribers. Each Party shall be the primary contact and account control for all interactions with its own subscribers. If a Party is contacted by a subscriber of the other Party, that Party shall: (a) provide only mutually agreed referral numbers in response to inquiries about the other Party's services or products; (b) not disparage the other Party or its products or services; and (c) provide information about its own products or services only in response to a specific subscriber inquiry about such products or services.
- 9.2 Escalation Contact Lists and Service Recovery Procedures. Each Party shall provide the other Party with all network escalation contact lists and service recovery procedures (including, without limitation, the procedures for opening of trouble tickets) necessary to facilitate the rapid resolution of disputes and service issues in a mutually agreed upon format and in a timely and reasonable manner. The Parties shall provide each other with as much advance notice as possible of any changes in their respective escalation contact lists and service recovery procedures.
- 9.3 Collocation. Except as specifically provided herein, nothing in this Agreement shall obligate either Party to provide collocation space, facilities or services to the other Party. Any such collocation arrangement shall be entered into by each Party in its sole discretion. The terms and conditions for any agreed-upon collocation shall be set forth in a separate written agreement between the Parties.

- 9.4 Compliance with Laws. In performing their respective obligations under this Agreement, the Parties shall comply with all applicable local, state and federal laws, rules and regulations.
- 9.5 Security. Each Party shall make reasonable efforts to secure its network and traffic subject to this Agreement from unauthorized access, transmission or use. The Parties shall cooperate to address security issues and to develop procedures for their resolution.

10. INDEMNIFICATION

- 10.1 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against all losses, costs, liabilities, damages and expenses (including reasonable attorney's fees) arising out of any third party claims against the Indemnified Party, arising out of any acts or omissions of the Indemnifying Party or out of the failure of the Indemnifying Party to perform, or cause to be performed, its obligations under this Agreement, including but not limited to, the discontinuation of service for nonpayment by end users. In the event the claim is ultimately determined to have arisen out of the gross negligence or intentional misconduct of the Indemnified Party, the Indemnified Party shall reimburse the Indemnifying Party for all expense incurred pursuant to this indemnification provision for any such event.
- 10.2 The Indemnified Party shall notify the Indemnifying Party promptly in writing of any claim, demand or suit (hereinafter "claim") by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section 10. The Indemnified Party shall tender the defense of such claim to the Indemnifying Party and shall cooperate in every reasonable manner with the defense or settlement of such claim.
- 10.3 The Indemnifying Party shall, to the extent of its obligations to indemnify under this Agreement, defend with counsel any claim brought by a third party against the Indemnified Party. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the claim. The Indemnified Party shall have the right to retain its own counsel, at its expense, and participate in but not direct the defense; provided, however, that if there are reasonable defenses in addition to those asserted by the Indemnifying Party, the Indemnified Party and its counsel may raise and direct such defenses, which shall be at the expense of the Indemnifying Party.
- 10.4 The Indemnifying Party shall not be liable under the indemnification provisions of this Agreement for a settlement or compromise of any claim unless the Indemnifying Party has approved the settlement or compromise in advance. The Indemnifying Party shall not unreasonably withhold such approval. If the defense of a claim has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense, then the Indemnifying Party shall be liable under the indemnification provisions of this Agreement for a settlement or compromise of such claim by the Indemnified Party.
- 10.5 The indemnification obligations of the Parties under this Section 10 shall survive

the expiration or termination of this Agreement for a period of three (3) years.

11. LIMITATION OF LIABILITY

- 11.1 Neither Party shall be liable to the other Party for any indirect, incidental, special or consequential damages resulting from any claim arising out of or related to this Agreement. This limitation applies to all causes of action; except that where the injured Party proves willful or intentional misconduct or gross negligence, this limitation shall not apply. In no event shall either Party be liable to the other for punitive or exemplary damages, regardless of the form of action. With respect to any claim or suit for damages arising out of mistakes, omissions, interruptions, delays or errors, or defects in transmission occurring in the course of furnishing service hereunder, the liability of the Party furnishing service, if any, shall not exceed an amount equivalent to the proportionate charge to the other Party for the period of service during which such mistake, omission, interruption, delay, error or defect in transmission or service occurs and continues. However, any such mistakes, omissions, interruptions, delays or errors, or defects in transmission or service which are caused or contributed to by the negligent or willful act of the other Party, or which arise from the use of the other Party's provided facilities or equipment, shall not result in the imposition of any liability whatsoever upon the Party furnishing service. This limitation of liability provision does not restrict or otherwise affect a Party's indemnification obligations under this Agreement.

12. DISCLAIMER OF WARRANTIES

- 12.1 US LEC MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES PROVIDED HEREUNDER.

13. CONFIDENTIALITY; PUBLICITY

- 13.1 Confidential Information is confidential or proprietary information (including without limitation technical and business plans, specifications, drawings, computer programs, network configurations, facilities deployment information, procedures, orders for services, usage information, Customer Service Records, customer account data, and CPNI) that one Party ("Owner") may disclose to the other Party ("Recipient") in connection with the performance of this Agreement and that is disclosed by an Owner to a Recipient in document or other tangible form (including on magnetic tape) or by oral, visual or other means, and that the Owner designates as proprietary and confidential whether by legends or other means.
- 13.2 By virtue of this Agreement, US LEC and "Company" may have access to or exchange Confidential Information belonging to the other Party. A Recipient (as defined in Section 13.1) of such Confidential Information shall not disclose any Confidential Information to any person or entity except Recipient's employees, contractors and consultants who have a need to know and who agree to be bound by this Section 13 to protect the received Confidential Information from unauthorized use or disclosure. Confidential Information shall not otherwise be disclosed to any third party without the prior written consent of Owner (as defined

in Section 13.1). Recipient shall use Confidential Information only for the purpose of this Agreement and shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own confidential or proprietary information.

- 13.3 The restrictions of this Section 13 shall not apply to information that: (i) was publicly known at the time of Owner's communication thereof to Recipient; (ii) becomes publicly known through no fault of Recipient subsequent to the time of Owner's communication thereof to Recipient; (iii) was in Recipient's possession free of any obligation of confidence at the time of Owner's communication thereof to Recipient; (iv) is developed by Recipient independently of and without reference to any of Owner's Confidential Information or other information that Owner disclosed in confidence to any third party; (v) is rightfully obtained by Recipient from third parties authorized to make such disclosure without restriction; or (vi) is identified by Owner as no longer proprietary or confidential.
- 13.3 In the event Recipient is required by law, regulation or court order to disclose any of Owner's Confidential Information, Recipient will promptly notify Owner in writing prior to making any such disclosure in order to facilitate Owner seeking a protective order or other appropriate remedy from the proper authority. Recipient agrees to cooperate with Owner in seeking such order or other remedy. Recipient further agrees that if Owner is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, Recipient will furnish only that portion of the Confidential Information that is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.
- 13.4 All Confidential Information disclosed in connection with this Agreement shall be and remain the property of Owner. All such information in tangible form shall be returned to Owner promptly upon written request and shall not thereafter be retained in any form by Recipient.
- 13.5 The Parties acknowledge that Confidential Information is unique and valuable, and that disclosure in breach of this Section 13 will result in irreparable injury to Owner for which monetary damages alone would not be an adequate remedy. Therefore, the Parties agree that in the event of a breach or threatened breach of confidentiality, Owner shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.
- 13.6 If the Confidential Information is provided orally, it will be deemed to be confidential or proprietary if the disclosing party identifies it as Confidential Information at the time of disclosure and the disclosing party reduces the orally communicated Confidential Information to writing and forwards it to the recipient within thirty (30) days of any such disclosure.
- 13.7 CPNI related to a Party's subscribers obtained by virtue of this Agreement shall be such Party's Confidential Information and may not be used by the other Party for any purpose except performance of its obligations under this Agreement, and in connection with such performance, shall be disclosed only in accordance with this

Section 13, unless the Party's subscriber expressly directs it to disclose such information to the other Party pursuant to the requirements of 47 U.S.C. Section 222(c)(2). If the other Party seeks and obtains written approval to use or disclose such CPNI from the Party's subscribers, such approval shall be obtained only in compliance with Section 222(c)(2) and, in the event such authorization is obtained, the requesting Party may use or disclose only such information as the Party provides pursuant to such authorization and may not use information that the requesting Party has otherwise obtained, directly or indirectly, in connection with its performance under this Agreement.

13.8 Except as otherwise expressly provided in this Section 13, nothing herein shall be construed as limiting the rights of either Party with respect to its subscriber information under applicable law, including without limitation 47 U.S.C. Section 222.

13.9 The provisions of this Section 13 shall survive the termination or expiration of this Agreement, but only for a period of two (2) years.

14. FORCE MAJEURE

14.1 In no event shall either Party have any claim or right against the other Party for any delay or failure of performance by such other Party if such delay or failure of performance is caused by or is the result of causes beyond the reasonable control of such other Party and is without such Party's fault or negligence (a "Force Majeure Event"), including, but not limited to, acts of God, fire, flood, epidemic or other natural catastrophe; unusually severe weather; explosions, nuclear accidents or power blackouts; terrorist acts; laws, orders, rules, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter of this Agreement or any civil or military authority; the condemnation or taking by eminent domain of any of a Party's facilities used in connection with the provision of services to its subscribers; national emergency, insurrection, riot or war; labor difficulties or other similar occurrences.

14.2 In the event that a Force Majeure Event causes a Party to delay or fail to perform any obligation(s) under this Agreement, the delaying Party shall resume performance of its obligations as soon as practicable in a nondiscriminatory manner that does not favor its own provision of services over that of the non-delaying Party.

15. ASSIGNMENT

15.1 With prior written notice to the other Party, either Party may assign this Agreement, in whole or in part, to an affiliate of that Party, provided that the assignee shall in writing assume and continue to perform the assignor's obligations hereunder. For purposes of this Agreement an "affiliate" is a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than ten percent.

- 15.2 All other assignments shall require the non-assigning Party's prior written approval, which approval shall not be unreasonably withheld or delayed. Any approved assignee shall in writing assume and continue to perform the assignor's obligations hereunder.
- 15.3 Subject to the above provisions, this Agreement, and each of the Parties' respective rights and obligations hereunder, shall be binding on and inure to the benefit of the Parties and each of their respective successors and permitted assigns.
16. GOVERNING LAW
- 16.1 This Agreement shall be governed by the laws of the State of "State", without giving effect to its principles of conflicts of laws.
17. NOTICES
- 17.1 All notices and communications concerning this Agreement shall be in writing and shall be addressed to:
- (a) If to US LEC:
- Vice President, Regulatory and Industry Affairs
US LEC
6801 Morrison Blvd.
Charlotte, NC 28211
Fax: 704-602-1074
- And
- General Counsel
US LEC
6801 Morrison Blvd.
Charlotte, NC 28211
Fax: 704-602-1119
- (b) If to "Company"
- _____

- 17.2 Notices shall be sent by registered or certified U.S. mail, postage prepaid, or by commercial overnight delivery service, or by facsimile, and shall be deemed delivered to addressee on the date of return receipt acknowledgment (in the case of notices sent via U.S. mail) or on the next day after the date the notice was sent (in the case of notices sent by either overnight delivery service or by facsimile); provided, however, that upon receipt of a returned notice marked "unclaimed," the sending Party shall make reasonable effort to contact and notify the other Party by

telephone. Notwithstanding the foregoing, the original of the facsimile notice must be sent by overnight delivery service in order for the delivery of facsimile notice to be deemed effected.

- 17.3 The address to which notices or communications may be given to either Party may be changed by written notice given by such Party to the other pursuant to this Section 17.

18. AUTHORITY

- 18.1 Each Party represents and warrants to the other that (a) it has full power and authority to enter into and perform this Agreement in accordance with its terms, (b) the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement, and (c) it has authority to do business in each of the jurisdictions in which it provides local exchange services to subscribers, and has obtained and will maintain all licenses, approvals and other authorizations necessary to provide such services and to perform its obligations under this Agreement, and (d) it is an entity, duly organized, validly existing and in good standing under the laws of the state of its origin.

19. TAXES

- 19.1 Any federal, state or local excise, license, sales, use taxes (excluding any taxes levied on income), municipal fees or tax-like charges resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other Party. Any taxes that one Party is obligated to collect and remit on behalf of the other Party shall be separately itemized on applicable billing documents between the Parties. The Party obligated to pay any such tax may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such Party shall not permit any lien to exist on any asset of the other Party by reason of the contest. The Party obligated to collect and remit taxes shall cooperate in any such contest by the other Party by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Notwithstanding the foregoing, either Party may provide the other Party with a tax exemption certificate, which the other Party shall honor.

20. MISCELLANEOUS

- 20.1 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.
- 20.2 If any part of this Agreement is held to be invalid, illegal or unenforceable, the unaffected provisions of this Agreement shall be unimpaired and shall remain in full force and effect. US LEC and "Company" shall negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intention of the Parties hereto.

- 20.3 This Agreement is the joint work product of US LEC and "Company". Accordingly, in the event of ambiguity, no presumption shall be imposed against either Party by reason of document preparation.
- 20.4 Except as otherwise stated herein, no waiver of any breach of this Agreement or of any of the terms hereof shall be effective unless such waiver is in writing and signed by the Parties. No waiver of any breach shall be deemed to be a waiver of any other or subsequent breach.
- 20.5 This Agreement between US LEC and "Company" is non-exclusive. Nothing in this Agreement shall prevent either Party from entering into similar arrangements with any other entities.
- 20.6 Neither Party shall publish or use any advertising, sales, promotions, or other publicity materials that use the other Party's name, logo, trademarks or service marks without the prior written approval of the other Party. Nothing in this Agreement establishes a license for either Party to use any of the other Party's brands, marks or logos without the prior written approval of the other Party.
- 20.7 The Parties acknowledge that this Agreement, and any or all of the terms hereof, may be subject to filing with, and regulatory approval by, various state and/or federal agencies. Should such filing or approval be required from time to time, or at any time, the Parties shall cooperate, to the extent reasonable and lawful, in providing such information as is necessary in connection with such filing or approval.
- 20.8 This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- 20.9 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter referred to herein and supersedes any and all prior or contemporaneous agreements, whether written or oral; provided, however, that unless otherwise expressly stated herein, nothing in this Agreement is intended to supersede the terms of any separate agreement between US LEC and "Company" for other services, including, without limitation, dedicated transport or switched access services. This Agreement does not in any way affect either Party's obligation to pay the other Party for any goods or services provided by the other Party pursuant to a separate agreement or under tariff.
- 20.10 Unless otherwise expressly permitted herein, this Agreement cannot be modified except in writing signed by both Parties.
- 20.11 In the event either Party hereto has any dispute, controversy, difference or claim arising out of, relating to or in connection with this Agreement, and such dispute cannot be settled through direct discussions, such dispute, controversy, difference or claim arising out of, relating to or in connection with this Agreement shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect by one (1) arbitrator appointed in accordance with such rules. The arbitrator's award shall be final and binding. Judgment upon the award rendered by the arbitrator may be entered in

any court having jurisdiction thereof. The arbitrator's award shall be in writing. The expenses incurred by the Parties as a result of submission of matters to arbitration hereunder and the resulting arbitration proceeding and related investigations shall be paid by the Parties as apportioned by the arbitrator or, if not apportioned, 50% by each Party. Any mediation or arbitration initiated hereunder shall take place in Charlotte, North Carolina. Notwithstanding the foregoing, either Party may, if it believes that it requires or is entitled to injunctive relief, file a civil action in any court having jurisdiction seeking injunctive relief. Any claim to or demand for monetary damages shall, however, be governed exclusively by the provisions for arbitration set forth herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered as of the date first set forth above.

US LEC of "State" Inc.

By: _____
Name: Wanda Montano
Title: Vice President, Regulatory and
Industry Relations
6801 Morrison Blvd.
Charlotte, NC 28211
Telephone: (704) 319-1074
Fax: (704) 602-1074

"Company Full Name"

By: _____
Name: _____
Title: _____

Telephone: _____
Fax: _____